

U.S. Patent No. 5,626,607 to *Malecki et al.* describes a clamp assembly. The clamp includes a flexible cable housed within a sheath. The cable and sheath extend between a clamp and a handle that acts as a cable actuator. The cable extends through a sheath which is anchored at the clamp and the actuator for actuating jaws from a proximal end of the clamp. A *separate malleable positioner* is provided for positioning the clamp about the body structure.

Initially, the Office Action alleges that that *Malecki et al.* describes “an elongate one piece malleable hollow shaft 680, . . .” In point of fact, “680” is not a “hollow shaft”, but rather is an “introducer 680.” The device does include “a tubular outer shaft 22 having a proximal end 24 and a distal end 26.” While no explicate teaching identifies the shaft of *Malecki et al.* as flexible rather than malleable, the teaching of *Malecki et al.* as a whole clearly defines the shaft as flexible. That is because the whole point of having an “separate, malleable introducer 680” is to position the clamp in the patient:

“the clamp assembly preferably includes an introducer 680 for facilitating introduction of the clamp 602 into the patient. The introducer 680 has a clamp holder 682 which is releasably fixed to the clamp 602. The introducer 680 has a pair of prongs 684 which engage a pair of holes 686 in the clamp 602. The proximal end of the introducer 680 has a rib 688 which engages a slot 690 in the handle 604. The introducer 680 also has a malleable shaft 681 which can be bent to a desired shape. Although it is preferred to releasably couple the introducer 680 to the handle 604, the introducer 680 may be completely independent of the handle 604. Referring to FIG. 49, the introducer 680 has a length similar to the length of the clamp assembly 600 so that the sheath 610 is pulled taught when the introducer 680 is coupled to the clamp 602 and handle 604.”

Malecki et al., Column 23, lines 12-28. (Emphasis added). Thus, not only there can be no doubt that *Malecki et al.* does not describe, teach or suggest the present invention, but *Malecki et al.* actually teaches away from the presently claimed invention by requiring an additional, separate, detachable (during surgery) introducer. Therefore, the rejection of claims 37-39 and 42 should be withdrawn.

In closing, applicant respectfully reminds the Patent Office that the Supreme Court has expressly prohibited the use of hindsight to “read into the prior art the teachings of the invention in issue.” *Graham v. John Deere Co.*, 383 U.S. 1, 36, 148 USPQ 459, 474 (1966).

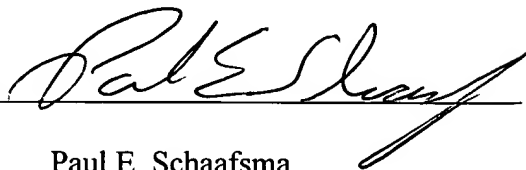
The Commissioner is authorized to charge any deficiency in fees or credit any overpayment to Deposit Account No. 01-0485. A duplicate copy of this correspondence is enclosed for such purpose.

Respectfully submitted,

Date

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